

MHBU080020962016



Received on: 27/06/2017

Registered on: 27/06/2017

Decided on: 27/03/2026

Duration: 08Y/09M/00D

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, NANDURA,
DISTRICT - BULDHANA**

(Presided over by Kiran V. Lunge)

Reg. Civil Suit No.27/2017

Exh:67

Plaintiffs:

- 1. Devkabai Subhash Dobale,**
Age- 45 years, Occupation- Agriculturist,
R/o. Davangepura, Nandura,
Ta. Nandura, Dist. Buldhana.
- 2. Govinda Pundlik Dobale,**
Age- 65 years, Occupation- Agriculturist,
R/o. Balaji Fail, Daulatpura, Shegaon,
Ta. Shegaon, Dist. Buldhana.

: V E R S U S :

Defendants: -

- 1. Kamalbai Bhikaji Dhande**
(Dead through Legal Representative),
- 2. Ashok Bhikaji Dhande**
(Dead through Legal Representative),
- 2-A. Nandabai Ashok Dhande**
Age- 35 years, Occupation: - Agriculturist,
- 2-B. Saurav Ashok Dhande**
Age- Minor, Occupation: - Education,
- 2-C. Prachi Ashok Dhande**
Age- Minor, Occupation: - Education,
Defendant No.2-B and 2-C through next friend-

Defendant No.2-A.

All R/o. Pimpalkhuta Dhande, Ta. Nandura,

Dist. Buldhana.

Appearances: -

Shri. R. P. Andure, Learned Counsel for Plaintiffs.

Shri. M. L. Tawari, Learned Counsel for Defendants.

: J U D G M E N T :

(Delivered on 27th day of March, 2026)

This is a suit wherein the plaintiffs have sought the decree of Declaration and Perpetual Injunction in respect of the suit properties.

02. Description of the suit properties: -

A) The agricultural land bearing Gat No.331 (Survey No. 114/2) admeasuring 1H. 03R. out of which 0H. 41R. land, situated at Malegaon Gond, Ta. Nandura, Dist. Buldhana.

B) The agricultural land bearing Gat No.331 (Survey No. 114/2) admeasuring 1H. 03R. out of which 0H. 62R. land, situated at Malegaon Gond, Ta. Nandura, Dist. Buldhana, bounded by-

Towards East-	Land of Dadarao Shaligram Wakode,
Toward West -	Pimpalkhuta Dhande Road,
Toward North -	Land of Samadhan,
Toward South-	Land of Ambadas.

More particularly described in schedule of properties of the plaint. (Hereinafter referred as "*the suit properties*").

03. Brief facts of the suit are as under: -

The suit property at serial No.A is owned and possessed by the plaintiff No.1 and was purchased prior to her marriage, in her maiden name i.e. Kum. Devkabai @ Kokilabai daughter of Dharmaji Dhande, by a registered sale deed dated 08/02/1991. The suit property at Serial No.B was originally owned and possessed by the father of plaintiff No.2,

namely Pundlik Damaji Dobale and upon his death on 21/10/1997, the plaintiff No.2 being legal heir, is in possession of the said property, though the revenue record still shows the father's name. The suit properties are fenced with thorny boundaries. The agricultural land bearing Gat No.336, survey No.114, admeasuring 2H. 37R. situated at Malegaon Gond belongs to the defendant No.1. The defendant No.2 is son of the defendant No.1 and manages and cultivates the said land on her behalf. The defendant No.2 also owns separate land bearing Gat No.324 situated to the east of the government road leading to Pimpalkhuta Dhande, and further to the east thereof lies Gat No.337. To the North of Gat No.337 lies the land bearing Gat No.336 owned by the defendant No.1. The defendants have been accessing their land in Gat No.336 by passing through Gat Nos.324 and 337. To the east of the plaintiff No.2's land bearing Gat No.331 lies the land of Dadarao Wakode in Gat No.332, and further east thereof lies the land of the defendant No.1 in Gat No.336. To the west of the plaintiff No.1's land lies a government road leading to Pimpalkhuta Dhande. Along the southern boundary of the suit properties runs an east-west trench approximately 2 feet wide and 2 feet deep, up to which the plaintiffs cultivate their land and sow crops annually. A similar trench exists along the northern boundary. The plaintiffs have sowed crops of black gram and pigeon pea in suit properties up to southern trench. South of the trench is a narrow boundary ridge of about one foot width, beyond which lies the land of Ambadas Wakode in Gat No.326. There has never been, nor is there presently, any east-west pathway along or over the northern or southern boundary ridges of the suit properties.

04. The plaintiffs further contented that, on 10/06/2017, at about 10:00 am, the defendant No.2 broke the thorny fencing on the south-western side of the suit properties and attempted to forcibly create a new

way by taking bullock cart from west to east through the standing crop, with the intention of passing through the suit properties. When the plaintiffs resisted, the defendant No.2 abused them and stated that he would create a way through the suit properties and that they could do nothing, and threatened the plaintiff No.2 with death. The plaintiff No.2 approached to the police station and lodged a report, but the police have refused to register it and advised him to seek relief from the Court. Again, on 15/06/2017, the defendant No.2 attempted to break the fencing and pass a bullock cart through the suit properties from west to east. When resisted, he again abused and threatened the plaintiff No.2 with dire consequences and reiterated his intention to forcibly create a way. The acts of the defendants are illegal and without any right, title or interest, and if not restrained, would result in destruction of standing crops and cause irreparable loss to the plaintiffs. Hence, the plaintiffs have constrained to institute the present suit for declaration that no pathway exists through the suit properties and decree of perpetual injunction restraining the defendants from interfering with their possession or attempting to create any pathway through the suit properties.

Brief facts of the written statement (Exh.13): -

05. The defendants have admitted that the suit property at serial No.A is owned and possessed by the plaintiff No.1 and suit property at serial No.B originally belonged to Pundlik Damaji Dobale, father of the plaintiff No.1 and that he died on 21/10/1997. They have also admitted that, the defendant No.2 owns separate land bearing Gat No.324 situated to the east of the government road leading to Pimpalkhuta Dhande, and that Gat No.337 lies to the east of Gat No.324. It is also admitted that to the east of Gat No.331 lies the land of Dadarao Wakode bearing Gat No.332, and further east lies the land of defendant No.1 bearing Gat No.336.

Further, to the west of Gat No.331 there exists a government road leading to Pimpalkhuta Dhande. It is also admitted that along the southern and northern boundaries of the suit properties, there exist east-west trenches. The defendants have not disputed the boundaries and nature of suit properties. The defendants have not disputed that the agricultural land bearing Gat No.336, Survey No.114, belongs to the defendant No.1, and that the defendant No.2 is her son. However, the defendants have denied all the adverse contentions raised by the plaintiffs.

06. The defendants further submitted that, the plaintiff No.2 is not the exclusive owner and in lawful possession of the land inherited from his deceased father. The deceased Pundlik Damaji Dobale had other legal heirs, who have not been impleaded as party to the suit. In para-No.2 of the plaint, the plaintiffs have pleaded that the defendants access their land through Gat No.337, and therefore, the land holders of Gat No.337 are also necessary parties. The plaintiffs have not fenced the suit properties with thorny fencing and no such fencing exists. The pleadings in respect of the land Gat No.337 are vague and insufficient. The plaintiffs have failed to disclose who is the owner of Gat No.337, its area, the number of co-sharers, and exact portion through which the defendants allegedly pass. Further, the land of Dadarao Wakode situated to the east of the suit properties is also involved, and he is also necessary party. The land Gat Nos.331, 332, and 336 were originally part of old survey No.114. At the time of consolidation, Survey No.114/2 belonged to Pundlik Dobale, Survey No.114/2A to Shaligram Wakode, and Survey No.114/3 to Mari Sambhula Wakode. Subsequently, by transfer, the land in survey No.114/3 (Gat No.336) came to be owned and possessed by the defendant No.1. There exists a government road to the west of Gat No.331 leading from Malegaon Gond to Pimpalkhuta Dhande. The suit

properties lie adjacent to the road, followed by Gat No.332 of Dadarao Wakode and thereafter Gat No.336 of the defendants. Since, the suit properties are adjacent to the road, it is necessary and legally incumbent that accesses be provided to the rear landholders for cultivation purpose. The defendant No.1 has been in continuous, open, peaceful and uninterrupted possession and cultivation of her land since 1991, having purchased it for the consideration of Rs.40,000/- from Sonaji Pandhari Wadhe. The defendant No.1 has been accessing her land from the government road by passing through the southern boundary of Gat Nos.331 and 332 in a continuous and uninterrupted manner. For agricultural operations, the defendant No.1 uses bullock carts and implements through an open strip approximately 8 feet wide. There exists an east-west drainage channel further south, constructed by the government, following the natural slope from east to west. Similarly, Dadarao Wakode also accesses his land in Gat No.332 in the same manner, continuously and without interruption. The suit claim is not maintainable as it seeks only negative declaration, without seeking any positive declaration of their own rights. Hence, prayed for dismissal of suit with costs.

07. My Ld. Predecessor has framed issues at **Exh.20**. I have recorded my findings thereon with reasons given as under: -

Sr.No	ISSUES	FINDINGS
1	Do plaintiffs prove that, on 10/06/2017 defendant No.2 destroyed the fencing of suit fields and tried to draw new approach road?	No
2	Do plaintiffs prove that, on 15/06/2017 defendant No.2 tries to destroy fencing of suit fields and tried to run bullock-cart through	No

there?

- | | | |
|---|--|------------------------------|
| 3 | Do plaintiffs are entitled for declaration as sought for? | No |
| 4 | Do plaintiffs are entitled for prohibitory permanent injunction as sought for? | No |
| 5 | What order and decree? | Suit is dismissed with costs |

-- REASONS FOR FINDINGS --

08. In order to prove the suit claim, the plaintiffs have examined plaintiff No.2 as PW-1 vide **Exh.23** and Sunil Dinkar Dhande as PW-2 vide **Exh.39**. The plaintiffs have closed evidence by filling *pursis* at **Exh.42**.

09. On the other hand, the defendant No.2-A has examined herself as DW-1 vide **Exh.43** and Dadarao Shaligram Wakode as DW-2 vide **Exh.44**. The defendants have also relied upon certified copies of 9(3) and 9(4) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, of Survey No.114/2, 114/2-A and 114/3 at **Exh.49 to 51**, certified copy of mutation entry No.637 of village Malegaon at **Exh.52**, certified copy of map (*Tipan Utara*) issued by the office of Deputy Superintendent of Land Records, Nandura at **Exh.53**, certified copy of agriculture card of survey No.114 situated at Malegaon at **Exh.54**, 7/12 extracts of Gat No.325 and 332 at **Exh.55 and 56**. The defendants have closed their evidence by filling *pursis* at **Exh.58**.

10. Ld. Counsel Shri. R.P.Andure for the plaintiffs submitted written notes of arguments vide **Exh.66** and contended that, the plaintiffs have proved that no pathway exists through the suit properties by leading oral evidence supported by documentary evidence such as revenue records,

village maps, and mutation entries. He argued that the defendants have failed to prove right of way through the suit properties. He relied on admissions given by the defendant No.2-A in cross-examination regarding the existence of a trench along the boundary up to which cultivation is carried out, thereby negating the possibility of pathway. He further contended that the evidence lead by the defendants has contradicted themselves and that the defendants have an alternative access through Gat No.324 and 337. The defendants have failed to prove the existence of their alleged right of way. The plaintiffs have also lodged complaint against the defendants regarding the incident of breaking the fence and attempting to create a new way. Hence, he prayed to decreed the suit.

11. On the other hand, Ld. Counsel Shri. M.L.Tawari for the defendants argued that the burden lies on the plaintiffs to prove that no pathway exists from the suit properties and that an alternative route is available to the defendants. However, the plaintiffs have failed to examine any landholder from Gat No.337 or to specify from which portion of Gat No.337 such access exists, nor have they produced any documentary evidence in that regard. He also argued that, according to the plaintiffs, the defendants have broken the fence on 10/06/2017 and again on 15/06/2017. However, no explanation or evidence has been produced as to how the fence was again broken on the latter date. No documentary evidence such as photographs or independent witnesses has been produced to prove the fencing. He also argued that the suit properties, land of Dadarao Wakode and the land of defendant No.1 form a part of old survey No.114, as evident from 9(3) and 9(4) extracts produced on record. The defendants cultivate their land through the suit properties and thereafter through the land of Dadarao Wakode, and that even Dadarao Wakode uses the same route. It is also pointed out that the

defendants have also examined Dadarao Wakode as DW-2, and despite opportunity, the plaintiffs have failed to cross-examine him. Therefore, the testimony of the Dadarao Wakode (DW-2) remains unchallenged. Lastly, he submitted that though it is argued by the plaintiffs that they have produced the documentary evidence. However, none of the document has been proved by the plaintiffs. Hence, he prayed for dismissal of the suit.

As to Issue No.1 and 2: -

(1. Do plaintiffs prove that, on 10/06/2017 defendant No.2 destroyed the fencing of suit fields and tried to draw new approach road?

2. Do plaintiffs prove that, on 15/06/2017 defendant No.2 tries to destroy fencing of suit fields and tried to run bullock-cart through there?)

12. Both these issues are connected with each other and based upon common evidence. Therefore, in order to avoid repetition, I have taken them together for the discussion.

13. The plaintiffs came with the case that, on 10/06/2017, the defendant No.2 destroyed the fencing of the suit properties and tried to create a new approach road, and again, on 15/06/2017 attempted to break the fencing of suit properties and pass a bullock-cart through the suit properties. The burden to these facts lies upon the plaintiffs. The plaintiffs have examined plaintiff No.2 and Sunil Dhande. The oral evidence of the plaintiff No.2 is nothing but reiteration of the plaintiff averments. Sunil Dhande (PW-2) in his evidence affidavit deposed that no pathway exists through the suit properties and that he has never taken a tractor through Gat No.331. However, in cross-examination he admitted that his land is situated about 2 km away from the suit

properties, he has no documentary evidence regarding the ownership of tractors, and he has no knowledge about what was the survey number of Gat No.331, 332 and 336. Further he doesn't know who is the owner of land in Gat No.324. He has not seen the map of village Malegaon. Further, he doesn't know how many landholders are there in Gat No.337 or whether the said Gat number consists land of 32 acre or not. He was also unable to state the exact road allegedly he had used for the tractor from the Gat Nos.324, 337 and 336. Thus, his testimony is of a general in nature and does not materially establish the alleged incidents dated 10/06/2017 and 15/06/2017.

14. The plaintiffs have not produced cogent documentary evidence to prove the alleged incidents dated 10/06/2017 and 15/06/2017 of destruction of fencing and attempted to trespass. Though it is contended that a complaint was lodged, the same has not been proved in accordance with law. No independent witness from the locality has been examined to corroborate the alleged acts. No photographs or concurrent evidence showing the existence of fencing or its destruction have been placed on record. On the contrary, the plaintiff No.2 in cross-examination admitted that no sowing has taken place in the suit properties on 10/06/2017, thereby creating doubt about the presence of standing crops, which forms part of plaintiff's case.

15. According to the plaintiffs, the fencing was broken on 10/06/2017 and again on 15/06/2017. However, no explanation brought on record by the plaintiffs as to how the fencing was restored in the intervening period so as to be broken again. This inconsistency goes to the root of the matter and renders the plaintiff's case doubtful.

16. On the other hand, the defendants have relied upon the documentary evidence i.e. certified copies of 9(3) and 9(4) extracts

(Exh.49 to 51), which establish that Gat Nos.331, 332 and 336 were originally part of survey No.114. The certified copy of mutation entry (Exh.54) and map (*Tipan Utara*) shows the relative position of lands, showing that the suit properties located towards the east of the government road and to the east of the suit properties the land of Dadarao Wakode and thereafter land of defendant No.1. However, the said map does not corroborate the plaintiff's contention regarding the specific alternative route through Gat Nos.324 and 337.

17. The defendants have also brought on record the evidence of Dadarao Wakode. He categorically testified that he and the defendant No.1 have been using the southern side of the suit properties to access to their agricultural lands for more than 20 years and that no fencing ever existed. It is pertinent to note here that, his testimony remained unchallenged, as the plaintiffs have failed cross-examine him despite having opportunity. Therefore, a useful reference can be made to the case of *Muddasani Venkata Narsaiah v. Muddasani Sarojana* of the Hon'ble Supreme Court, reported in (2016) 12 SCC 288, wherein, in para 15 it is held by the Hon'ble Supreme Court that:

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906]. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If

no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440]”

Considering the above ratio, I learn that the cross-examination is a substantive and essential part of trial, and a party is duty bound to confront the witness with its version during cross-examination. If a party fails to cross-examine a witness on a material aspect, it amounts to acceptance of that part of the testimony, and the Court is entitled to presume that the said fact has not been disputed. In other words, non-cross-examination on a material point results in deemed admission of that fact, and such unchallenged testimony carries significant evidentiary value. Thus, considering the ratio the material aspect of the testimony of Dadarao Wakode (DW-2), particularly regarding long standing user of the pathway and absence of fencing, have remained unchallenged, and these crucial aspects leads to a legal presumption that the plaintiffs have accepted his version. Thus, considering the above discussion, I have no hesitation to hold that the plaintiffs have failed to prove the specific incidents dated 10/06/2017 and 15/06/2017. On the contrary, the defendants have brought on record probable evidence regarding long-standing under of access through the suit properties. Hence, I record my findings as to issue No.1 and 2 in the **negative**.

As to Issue No.3: -

(3. Do plaintiffs are entitled for declaration as sought for?)

18. The plaintiff specifically pleaded that the no pathway exists through the suit properties. Thus, the plaintiffs have prayed for declaration against the defendants. It is settled law that the burden lies on the party asserting a fact. Considering the prayer, it is to the plaintiffs to prove non-existence of pathway and he cannot rely on the weakness

in the defendant's case. As already discussed while dealing with issue Nos.1 and 2, the plaintiffs have failed to substantiate their case through convincing documentary or oral evidence. Further, there is no contention which shows the documents placed on record by the plaintiffs conclusively establish the absence of any pathway through the suit properties. On the other hand, the documentary evidence produced by the defendants, particularly certified copies of 9(3) and 9(4) extracts under the Maharashtra Prevention of Fragmentation and Consolidation Act and the map (*Tipan Utara*), shows that the Gat Nos.331, 332 and 336 were originally part of old survey No.114 and are situated in a manner where access to interior lands may be required. The map (*Tipan Utara*) does not support the plaintiff's version regarding specific alternative route through Gat Nos.324 and 337.

19. The testimony of the plaintiff No.2 shows lack of knowledge regarding material aspects such as consolidation scheme, ownership details of adjoining lands, and even about the Gat No.337 through which he alleges an alternative route exists. He also answered that he will not examine any landholder from Gat No.337. It is pertinent to note here that, the plaintiff No.2 has not assigned any explanation as to why he will not examine any landholders from Gat No.337. *Section 114, illustration (g) of the Indian Evidence Act* provides, “(g) That evidence which could be and is not produced would, if produced, be unfavorable to the person who withhold it.” Thus, considering the plea of the plaintiffs it appears they failed to produce the best evidence. On the other hand, the defendants have not only asserted their right of way through the suit properties but have also examined an adjacent landholder Dadarao Wakode (DW-2), who has supported the defendant's case by deposing that he himself has been using the same pathway for access to his land and that the defendants, being adjoining holders, are

also using the said way. This evidence remained unchallenged. Thus, an adverse inference is liable to be drawn against the plaintiffs as per Section 114 of the Indian Evidence Act. Moreover, the defendants have led evidence showing long standing user of the alleged pathway along the southern boundary of Gat Nos.331 and 332. In view of the above discussion, it is evident that the plaintiffs have failed to show that the defendants have a definite and usable alternative pathway. Thus, the plaintiffs have failed to prove that no pathway exists through the suit properties. Hence, the plaintiffs are not entitled for the declaration as prayed. Accordingly, I record my findings as to issue No.3 in the **negative**.

As to Issue No.4: -

(4. Do plaintiffs are entitled for prohibitory permanent injunction as sought for?)

20. The plaintiffs have prayed for the decree of perpetual injunction restraining the defendants from interfering with their possession over the suit properties and from attempting to create any pathway through the suit properties. It is settled law that in order to succeed in a suit for perpetual injunction, the plaintiff must establish their lawful and settled possession over the suit property and threatened interference by the defendants without authority of law. In present case, both the parties have no dispute regarding their ownership and possession. It is pertinent to note here that the foundation of the plaintiff's case regarding alleged acts of interference on 10/06/2017 and 15/06/2017 has already been dealt with while deciding issue Nos.1 and 2. As already discussed in issue Nos.1 and 2, the plaintiffs have failed to prove the alleged incidents of breaking of fencing and attempted creation of new pathway by leading cogent and convincing evidence. The evidence on record does not establish the plaintiffs exclusive and uninterrupted possession in the

strict sense so as to entitle them to equitable relief of injunction. As already discussed in issue No.3, the evidence and surrounding circumstances, shows that the defendants have been using the pathway from the suit properties for access to their land for a considerable period. It is also pertinent to note here that, the plaintiffs have taken specific plea that the defendants have an alternative pathway through Gat Nos.324 and 337. However, as already discussed in earlier issues, the plaintiffs have failed to examine material witness i.e. any land holder of Gat No.337 to substantiate this plea, and an adverse inference drawn against the plaintiffs for withholding best possible evidence. The defendants have led evidence to show long-standing use of the pathway. The testimony of the Dadarao Wakode (DW-2) adjacent land holder remained unchallenged, lends corroboration to the defendant's contention of user and denies the plaintiff's claim of absolute prohibition.

21. It is settled law that the injunction is an equitable and discretionary relief and this relief cannot be granted where the plaintiff fails to establish a clear legal right and where the defendant demonstrates a plausible or pre-existing right. As already discussed in issue No.3, the plaintiffs have failed to prove that no pathway exists through the suit properties. In such circumstances, granting an injunction would amount to restraining the defendants from exercising a right which appears to have been in existence. The defendants have shown that the alleged pathway is being used for access to agricultural land, and restraining them would cause serious prejudice to their rights. The plaintiffs have failed to prove unlawful interference by the defendants. Thus, the plaintiffs are not entitled for the perpetual injunction as prayed. Hence, I record my findings as to issue No.4 in the **negative**.

As to Issue No.5: -

(5. What order and decree?)

22. In view of the negative findings as to issue No.1 to 4, I found that the plaintiffs have failed to prove the specific incidents dated 10/06/2017 and 15/06/2017. Further, the plaintiffs have failed to prove that no pathway exists through the suit properties. Lastly, the plaintiffs have also failed to prove unlawful interference by the defendants. Resultantly, the suit is liable to be dismissed. It is settled law that the costs shall follow the event. To answer issue No.5, following order is passed:

- ORDER -

01. Suit is dismissed with costs.
02. Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

Date- **27/03/2026**

Place- **Nandura**

(Kiran V. Lunge)
Civil Judge Junior Division,
Nandura, Dist. Buldhana.